

Message Text

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SUBJECT: CIVAIR: CAB ORDER DISAPPROVING PAL APPLICATION
REF: STATE 43934
TEXT OF CAB ORDER FOLLOWS: BEGIN TEXT
IN THE MATTER OF THE SCHEDULES OF PHILIPPINE AIR LINES,
INC. DOCKET 25709 ORDER DISAPPROVING SCHEDULES
PHILIPPINE AIR LINES, INC. (PAL) HOLDS A FOREIGN AIR
CARRIER PERMIT ISSUED PURSUANT TO ORDER E-17953,
EFFECTIVE JANUARY 22, 1962, AUTHORIZING THE FOREIGN
AIR TRANSPORTATION OF PERSONS, PROPERTY AND MAIL BETWEEN
THE PHILIPPINES AND SAN FRANCISCO, CALIFORNIA, VIA
HONOLULU, HAWAII. THERE IS NO AIR TRANSPORT SERVICES
AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES
AND THE GOVERNMENT OF THE PHILIPPINES, INASMUCH AS NOTICE
OF TERMINATION OF THE AGREEMENT BY THE GOVERNMENT OF THE
PHILIPPINES WAS GIVEN IN MARCH 1959. FOLLOWING TERMINA-
TION OF THE BILATERAL, SERVICES WERE CONTINUED BY THE
RESPECTIVE CARRIERS PURSUANT TO THE PRINCIPLES OF COMITY
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AND RECIPROCITY. HOWEVER, IN AUGUST 1974 AN INTERIM
ARRANGEMENT WAS ENTERED INTO BETWEEN THE GOVERNMENT OF
THE UNITED STATES AND THE GOVERNMENT OF THE PHILIPPINES
PROVIDING FOR FREQUENCIES OF COMBINATION SERVICES AND
CERTAIN ADDITIONAL PROVISIONS AS TO ALL-CARGO SERVICES.

THE GOVERNMENT OF THE PHILIPPINES HAS ISSUED VARIOUS

LICENSES TO NORTHWEST AIRLINES, INC., PAN AMERICAN WORLD AIRWAYS, INC., AND THE FLYING TIGER LINE INC., AUTHORIZING SCHEDULED AIR SERVICES BETWEEN POINTS IN THE UNITED STATES AND MANILA VIA SPECIFIC INTERMEDIATE POINTS. THESE AUTHORIZATIONS SPECIFY THE NUMBER OF FREQUENCIES WHICH MAY BE OPERATED. SUCH FREQUENCIES ARE RESTRICTED TO THE LEVELS OF SERVICE PROVIDED FOR UNDER THE AUGUST 1974 INTERIM ARRANGEMENT.

IN ADDITION TO THE SPECIFIED LEVEL OF COMBINATION FREQUENCIES (FOR PHILIPPINE AIRLINES, DAILY DC-10 COMBINATION SERVICES), THE INTERIM ARRANGEMENT PROVIDES AN OPTION FOR PAL TO APPLY TO THE CAB TO OPERATE THREE WEEKLY ALL-CARGO SERVICES WITH DC-8 SERIES AIRCRAFT. IT ALSO REQUIRES THAT THE REPUBLIC OF THE PHILIPPINES "GIVE SYMPATHETIC CONSIDERATION TO APPLICATIONS FROM UNITED STATES AIRLINES FOR ALL-CARGO SERVICES ON AUTHORIZED ROUTES."

NOTWITHSTANDING THIS PROVISION, AND DESPITE OBJECTIONS OF THE UNITED STATES GOVERNMENT IN DECEMBER 1974 AND MARCH 1975, AND AT THE CONSULTATIONS HELD IN MANILA IN OCTOBER 1976, THE GOVERNMENT OF THE PHILIPPINES HAS FAILED TO ACT ON SEVERAL REQUESTS FILED BY U.S. CARRIERS TO SUBSTITUTE EQUIPMENT ON ALL-CARGO SERVICES, TO CONTINUE THE OPERATION OF CERTAIN ALL-CARGO SERVICES WHICH WERE IN OPERATION PURSUANT TO AN AUTHORIZATION WHICH HAD BEEN GRANTED BY THE PHILIPPINE GOVERNMENT PRIOR TO THE NEGOTIATION OF THE AUGUST 1974 INTERIM ARRANGEMENT, UNCLASSIFIED

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AND TO REINSTITUTE SCHEDULES WHICH PREVIOUSLY HAD BEEN TERMINATED BY THE PHILIPPINE GOVERNMENT. SPECIFICALLY, IN NOVEMBER 1974 THE PHILIPPINE GOVERNMENT DENIED AN APPLICATION OF PAN AMERICAN WORLD AIRWAYS TO RENEW ITS AUTHORITY TO CONDUCT CERTAIN ALL-CARGO FLIGHTS SUBJECT TO A RESTRICTION ON THE AMOUNT OF COMMERCIAL TRAFFIC CARRIED. OBJECTIONS WERE MADE BY THE UNITED STATES GOVERNMENT IN NOTES OF DECEMBER 1974 AND MARCH 1975, NOTING THE MUTUAL UNDERSTANDING OF THE TWO GOVERNMENTS AT THE AUGUST 1974 NEGOTIATIONS, WHICH RESULTED IN THE INTERIM ARRANGEMENT, THAT EXISTING ALL-CARGO RIGHTS ENJOYED BY UNITED STATES CARRIERS WOULD NOT BE ALTERED. THE PHILIPPINE GOVERNMENT, NEVERTHELESS, REFUSED TO RENEW PAN AMERICAN'S AUTHORITY WITH THE EFFECT THAT PAN AMERICAN'S PREVIOUSLY-EXISTING RIGHTS TO CONDUCT THIS SERVICE WERE TERMINATED AS OF NOVEMBER 15, 1974. A SUBSEQUENT APPLICATION OF PAN AMERICAN IN MAY 1975 SEEKING TO REINSTATE ALL-CARGO SERVICE WAS NOT ACTED UPON BY THE PHILIPPINE GOVERNMENT, IN THAT IT WAS "DEFERRED

FOR FURTHER STUDY." THUS, PAN AMERICAN HAS BEEN DENIED SINCE NOVEMBER 15, 1974, THE RIGHT TO CONTINUE ITS ALL-CARGO SERVICE IN OPERATION AT THE TIME OF THE AUGUST 1974 INTERIM ARRANGEMENT, DESPITE THE INTENT OF THE 1974 INTERIM ARRANGEMENT THAT ALL EXISTING OPERATIONS OF U.S. CARRIERS WLD BE PERMITTED TO CONTINUE UNIMPAIRED, AND SPECIFICALLY, THAT "SYMPATHETIC CONSIDERATION" WOULD BE GIVEN TO OTHER ALL-CARGO APPLICATIONS OF U.S. CARRIERS.

SIMILARLY, THE GOVERNMENT OF THE PHILIPPINES HAS REFUSED TO PERMIT FLYING TIGER TO SUBSTITUTE B-747 FLIGHT EQUIPMENT IN THE OPERATION OF ITS THREE WEEKLY DC-8 ALL-CARGO FREQUENCIES AT MANILA, DESPITE FORMAL AND INFORMAL ASSURANCES TO THE GOVERNMENT OF THE PHILIPPINES THAT THE SUBSTITUTION OF EQUIPMENT WOULD NOT RESULT IN AN INCREASE IN THE AMOUNT OF CARGO TRAFFIC CARRIED TO AND FROM

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THE PHILIPPINES OVER THAT WHICH COULD HAVE BEEN ACCOMMODATED ON THE THEN-UTILIZED DC-8 AIRCRAFT. AN APPLICATION WAS FILED BY FLYING TIGER IN JANUARY 1975 SEEKING SUCH SUBSTITUTION OF B-747 AIRCRAFT, AND, FOLLOWING A HEARING, WAS "DEFERRED FOR FURTHER STUDY." A FURTHER MORE EXTENSIVE APPLICATION WAS FILED IN JULY 1976 AND RECEIVED THE SAME TREATMENT. AT CONSULTATION HELD WITH THE PHILIPPINES IN MANILA IN OCTOBER, 1976, THE U.S. GOVERNMENT MADE FURTHER REPRESENTATIONS WITH RESPECT TO THE FAILURE OF THE PHILIPPINE GOVERNMENT TO GRANT BOTH THE PAN AMERICAN AND FLYING TIGER APPLICATIONS IN ACCORDANCE WITH THE PROVISIONS OF THE 1974 INTERIM ARRANGEMENT. NEVERTHELESS, DESPITE A FURTHER SUBSEQUENT APPLICATION FILED BY FLYING TIGER IN OCTOBER, 1976 FORMALLY PROPOSING TO LIMIT CARGO CARRIED TO AND FROM THE PHILIPPINES ON ITS PROPOSED B-747 SERVICE TO THAT WHICH COULD BE ACCOMMODATED ON ITS DC-8 AIRCRAFT AND DESPITE THE ABSENCE OF ANY ECONOMIC EFFECT WHATSOEVER ON THE PHILIPPINES FROM THIS PROPOSED SUBSTITUTION THE PHILIPPINE GOVERNMENT TO DATE HAS TAKEN NO ACTION ON THE APPLICATION.

THE BOARD BY ORDER 73-7-138, ISSUED PURSUANT TO PART 213 OF ITS REGULATIONS, DIRECTED THAT PAL FILE WITH THE CIVIL AERONAUTICS BOARD EXISTING SCHEDULES OF SERVICE BETWEEN THE PHILIPPINES AND THE UNITED STATES AND PROPOSED SCHEDULES AT LEAST 30 DAYS PRIOR TO THE INAUGURATION OF SUCH SCHEDULES. PAL BY LETTER APPLICATION DATED JANUARY 25, 1977, SEEKS BOARD APPROVAL TO INAUGURATE THREE WEEKLY ALL-CARGO FREQUENCIES BETWEEN THE PHILIPPINES AND THE UNITED STATES, PURSUANT TO THE OPTION PROVIDED FOR IN THE 1974 INTERIM ARRANGEMENT. THE NEW SERVICE IS PROPOSED

FOR MARCH L EFFECTIVENESS.

IN VIEW OF THE REPEATED AND LONG-STANDING INSTANCES OF DENIAL INACTION, AND DEFERRAL, AS DETAILED ABOVE, IT IS CLEAR THAT THE GOVERNMENT OF THE PHILIPPINES HAS FAILED
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TO GIVE "SYMPATHETIC CONSIDERATION" TO U.S. CARRIERS' CARGO APPLICATIONS IN ACCORDANCE WITH THE TERMS OF THE AUGUST 1974 INTERIM ARRANGEMENT. BY SUCH INACTION, AS WELL AS THE DENIAL TO PAN AMERICAN OF THE RIGHT TO CONTINUE ALL-CARGO SERVICES WHICH WERE BEING CONDUCTED AT THE TIME OF THE NEGOTIATIONS OF AUGUST 1974 INTERIM ARRANGEMENT, THE PHILIPPINE GOVERNMENT HAS BREACHED THE ALL-PROVISIONS OF THE 1974 INTERIM ARRANGEMENT INsofar AS IT RELATES TO ALL-CARGO SERVICE. BY SUCH VIOLATIONS, THE GOVERNMENT OF THE PHILIPPINES HAS, OVER THE OBJECTIONS OF THE UNITED STATES GOVERNMENT, IMPAIRED THE OPERATING RIGHTS OF U.S. CARRIERS PROVIDED FOR IN THE INTERIM ARRANGEMENT, AND DENIED U.S. AIR CARRIERS A FAIR AND EQUAL OPPORTUNITY TO EXERCISE SUCH OPERATING RIGHTS. ACCORDINGLY, THE BOARD FINDS THAT INAUGURATION OF PAL'S PROPOSED ALL-CARGO SERVICE, AT A TIME WHEN THE GOVERNMENT OF THE PHILIPPINES CONTINUES TO WITHHOLD APPROVAL OF SCHEDULES PROPOSED BY UNITED STATES CARRIERS, MAY ADVERSELY AFFECT THE PUBLIC INTEREST, AND THAT SUCH PROPOSED SCHEDULES SHOULD BE DISAPPROVED. SHOULD THE PENDING ALL-CARGO APPLICATIONS OF THE U.S. CARRIERS BE FAVORABLY ACTED UPON SUBSEQUENT TO THE ISSUANCE OF THIS ORDER, WE WOULD, OF COURSE, RECONSIDER THIS ACTION.

ACCORDINGLY, IT IS ORDERED THAT:

1. THE SCHEDULES FILED BY PAL DATED JANUARY 25, 1977, BE, AND THEY HEREBY ARE DISAPPROVED, AND SHALL NOT BE INAUGURATED, INsofar AS THEY PROVIDE FOR THREE WEEKLY ALL-CARGO FREQUENCIES WITH DC-8 AIRCRAFT BETWEEN THE PHILIPPINES AND THE UNITED STATES;

2. THIS ORDER SHALL BE SUBMITTED TO THE PRESIDENT (THIS ORDER WAS SUBMITTED TO THE PRESIDENT ON FEBRUARY 17, 1977.) AND SHALL BECOME EFFECTIVE ON FEBRUARY 27, 1977;

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3. THIS ORDER SHALL REMAIN IN EFFECT UNTIL FURTHER ORDER

OF THE BOARD; AND

4. THIS ORDER SHALL BE SERVED ON PHILIPPINE AIR LINES,
INC., AND THE AMBASSADOR OF THE PHILIPPINES IN WASHINGTON,
D.C. THIS ORDER SHALL BE PUBLISHED IN THE FEDERAL REGIS-
TER. BY THE CIVIL AERONAUTICS BOARD. PHYLLIS T. KAYLOR
SECRETARY END TEXT

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